

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE EX REL. UNION ELECTRIC
COMPANY D/B/A AMEREN MISSOURI**

RESPONDENT,

**v.
PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI,**

APPELLANT,

**MISSOURI INDUSTRIAL ENERGY
CONSUMERS**

APPELLANT.

DOCKET NUMBER WD75403 Consolidated with WD75404
DATE: May 14, 2013

Appeal From:
Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:
Division Three: Cynthia L. Martin, Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt,
Judge

Attorneys:

James B. Lowery, Columbia, MO and Thomas M. Byrne, St. Louis, MO, for respondent Union
Electric Company d/b/a Ameren Missouri.

Shelley E. Brueggemann, Jefferson City, MO, for appellant Public Service Commission.
Brent E. Roam, St. Louis, MO, for appellant Missouri Industrial Energy Consumers.

MISSOURI APPELLATE COURT OPINION SUMMARY

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D/B/A AMEREN MISSOURI,**

RESPONDENT,

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PUBLIC SERVICE COMMISSION OF
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No. WD75403 Consolidated with WD75404

Cole County

Before Division Three: Cynthia L. Martin, Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt, Judge

Union Electric Company d/b/a Ameren Missouri ("Ameren") appeals from the Public Service Commission's ("PSC") report and order that required Ameren to refund \$17,169,838 to its ratepayers following a prudence review of a rate adjustment under a fuel adjustment clause. The PSC concluded that Ameren acted imprudently in failing to treat revenues it received from two power sales contracts as off-system sales for the purpose of calculating the rate adjustment. Ameren argues: (1) the PSC erred in interpreting the phrase "long-term full and partial requirements sales" to exclude the two contracts; (2) the PSC unlawfully ordered refunds to ratepayers because Ameren did not act unreasonably and its actions did not harm ratepayers; and (3) the PSC's report and order was not supported by competent and substantial evidence on the record.

REVERSE TRIAL COURT JUDGMENT AND AFFIRM THE PSC'S ORDER

Division Three holds:

(1) Whether the PSC's interpretation and construction of a tariff was reasonable is a question of law that we review *de novo*. Similar to interpreting statutes, we consider the intent of the PSC from the language used in the tariff, give effect to that intent if possible, and consider the words used in their plain and ordinary meaning. Here, the phrase "long-term full and partial requirements sales" is not defined in the tariff and is ambiguous. Thus, we resort to rules of statutory construction

Fuel adjustment clauses are purely statutory creatures. The primary rule of statutory construction we must apply requires that we construe the phrase "long-term full and partial requirements sales" to avoid rendering the fuel adjustment clause in Ameren's tariff unlawful.

Section 386.266 allows an electric utility to adjust its rates outside a general rate proceeding to address fluctuations in fuel costs. Ameren argues that "long-term full and partial requirements sales" should be construed to permit it resell excess power pursuant to contracts with a term in excess of a year in order to recover unexpectedly lost revenue. The PSC has no authority to adopt, interpret, or apply a fuel adjustment clause to permit interim rate adjustments to recover lost revenue.

The PSC interprets "long-term full and partial sales contracts" to refer to existing municipal contracts which required Ameren to provide services on an ongoing basis, necessitating consideration of the service obligation in Ameren's resource planning. This interpretation excludes revenues from such contracts from consideration in Ameren's fuel adjustment clause because the cost to produce the power for the contracts is not flowed through the clause. The PSC's interpretation does not run afoul of the authorized purpose of a fuel adjustment clause, and is supported by competent and substantial evidence.

(2) Because the two contracts were not "long-term full and partial requirements sales" and instead were off-system sales that should have been reflected in the fuel adjustment clause, the PSC reasonably concluded that Ameren was imprudent when it violated the terms of its tariff.

Opinion by Cynthia L. Martin, Judge

May 14, 2013

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